

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

PERISTERONOPIGHI TRANSPORT CO LTD,

Applicants

and

THE REPUBLIC OF CYPRUS, THROUGH

- 1 THE MINISTER OF INTERIOR,
- 2 THE PERMITS AUTHORITY,

Respondents

PERISTERONOPIGHI
TRANSPORT CO
LTD
v.
REPUBLIC
(MINISTER OF
INTERIOR AND
ANOTHER)

(Case No 14/66)

Motor Transport—Road Service Licences—The Motor Transport (Regulation) Law, 1964 (Law No 16 of 1964), section 8(2)—Decision of the Respondent Authority to grant a road service licence under the said law to the Interested Party—Decision taken without hearing the representations or views of the Applicant company, a competitor of the Interested Party to the knowledge of the Respondent Licensing Authority—Applicant entitled to make the present recourse because in the circumstances, its legitimate interest has been affected by the decision complained of in the sense of Article 146 2 of the Constitution—Said decision annulled on the ground that the discretion of the Respondent Authority was exercised in a defective manner, contrary to the relevant principles of administrative law and in excess and abuse of powers

Constitutional and Administrative Law—Legitimate Interest in the sense of Article 146 2 of the Constitution—See above

Legitimate Interest—Article 146 2 of the Constitution—See above

Administrative Law—Discretion—Exercise of discretion in a defective manner, contrary to the relevant principles of administrative law and in excess and abuse of powers—See above under Motor Transport

Discretion—Defective exercise—See above

Excess and abuse of powers—See above

Abuse of powers—See above

Road Service Licences—See above under Motor Transport.

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Words and Phrases—“Persons” within section 8(2), of the Motor Transport (Regulation) Law, 1964—Company and its shareholders—Although in law a company is a different person from its shareholders who at the relevant time as individuals were “persons” providing transport facilities within the section long before the incorporation of the Applicant company—Still, for the purposes of the proper application of that section (*supra*) the company itself ought to have been treated as a group of such “persons” enjoying the benefits and rights provided thereunder i.e. “persons” whose representations ought to have been taken under section 8(2) (*supra*) by the Respondent licensing Authority.

By this recourse under Article 146 of the Constitution the Applicant company, which is a transport concern, challenges the validity of the decision of Respondent 2, the Licensing Authority under the Motor Transport (Regulation) Law, 1964 (Law No. 16 of 1964), to grant to one Andreas Theodossiou, the Interested Party, a road service licence in respect of his bus for the routes “Peristeronopighi—Famagusta” and “Peristeronopighi—Lefkoniko”, under the provisions of the said law.

The Applicant company is the owner of nine buses, but it has been licensed in respect of five buses only for the routes in question; it has been alleged by the Applicant that there was not sufficient business along such routes for all its nine buses. On the 20th December, 1965, the Interested Party applied to the Licensing Authority for a road service licence in respect of his thirty-two seater bus TBJ352, stating in his said application that the existing buses did not serve sufficiently the needs of the village. Particulars of such deficiencies on the part of the Applicant company were given by the Interested Party in his said application which was supported by two hundred signatures of co-villagers of his and, also, by the Police. The application, however, was not brought to the notice of the Applicant company which, thus, was denied the opportunity to make its own representations to the Licensing Authority. Eventually the application of the Interested Party was acceded to and a road service licence for the routes mentioned above was granted to the Interested Party. It is this licence which is being challenged by the Applicant company by its present recourse.

By section 8 (2) of the said Law No. 16 of 1964 (*supra*) it is provided that the licensing Authority, in exercising its discretion regarding the granting of road service licences, “shall take into consideration any representations which may be made by persons

who, on the date of the coming into operation of the Law, were already providing in good faith and for a reasonably long time transport facilities along or near to the routes in question or any part thereof". On the other hand, a preliminary issue has arisen during the hearing of this case whether a legitimate interest of the Applicant company has been affected by the *sub judice* decision, in the sense of Article 146.2 of the Constitution, so as to entitle it to make this recourse. Article 146.2 of the Constitution provides : " Such a recourse may be made by a person whose any existing legitimate interest which he has either as a person or by virtue of being a member of a Community, is adversely and directly affected by such decision or act or omission".

A further point, unsuccessfully taken by the Respondent, was that the Applicant company could not rely on the aforesaid section 8 (2) for its representations to be heard as provided thereunder (*supra*) because it was formed long after the Law in question came into operation ; and, therefore, the Applicant company could not be included in the group of " persons " who on the date of the coming into operation of the relevant provisions " were already providing in good faith transport facilities along or near to the routes in question " (*supra*). The Court disposed of this argument on the broad ground that the shareholders of the Applicant company, being admittedly persons who at the time when the Law was brought into operation were as individuals providing transport facilities within the said provision of section 8(2) (*supra*), the Applicant company ought, for the purposes of the proper application of that section, to have been treated as a group of persons whose representations ought to have been taken into consideration.

In granting the recourse and annulling the decision complained of the Court :

Held: As to the issue of legitimate interest within Article 146.2 of the Constitution :

In view of the fact that by the *sub judice* decision a competitor was allowed to provide transport facilities along a route, where, at the time, the Applicant company was providing such facilities itself, I have no difficulty in holding that a legitimate interest of the Applicant has been affected by the decision in question, so as to entitle it under Article 146.2 of the Constitution to make this recourse.

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Held: As to the merits of the case:

(1)(a) The Applicant company was formed on the 16th August, 1965; so it was not in existence as such, when the relevant provisions of the Motor Transport (Regulation) Law, 1964 (*supra*) came into operation in November 1964 (see Notice under Not. 483, Supplement No. 3 to the Official Gazette of the 12th November, 1964).

(b) It is not in dispute, however, that the shareholders of the Applicant company are persons who as individuals were providing transport facilities in the past, in the sense of the relevant provision in section 8 (2) of the said Law (*supra*): so, though, in law, a company is a different person from its shareholders, I do think that for the purposes of the proper application of section 8 (2) of the Law (*supra*), the Applicant company ought to have been treated as a group of persons whose representations ought to have been taken into consideration under section 8(2) (*supra*); and once it was known to the Licensing Authority that the Applicant company was objecting to the grant of other road service licences along the routes concerned, then the Applicant ought to have been informed of the application of the Interested Party so that it could put forward any representations it might wish to make.

(2) Irrespective, however, of the above view, there remains always the fact that the Licencing Authority granted the road service licence in question to the Interested Party on the ground of an allegation that the Applicant company was not sufficiently serving the routes concerned and was exploiting a monopoly enjoyed by it. I am of the opinion that it was necessary, as a matter of proper administration and for the purposes of conducting a proper enquiry and ascertaining all material facts, to bring the said allegation to the notice of the Applicant company, and have its explanations thereon, before deciding finally the matter (see *Hji Louca and The Republic* (1966) 3 C.L.R. 854); this was not done and so the discretion of the Licensing Authority was exercised in a defective manner, contrary to the relevant principles of administrative law and in excess and abuse of powers.

(3) For the above reasons I have decided to declare the *sub judice* decision null and void and of no effect whatsoever and let the matter be reconsidered properly by the Licensing Authority.

Application granted. Sub judice decision annulled. No order as to costs.

Cases referred to :

HjiLouca and The Republic (1966) 3 C.I..R. 854

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Recourse.

Recourse against the validity of the decision of Respondent No. 2 to grant to the interested party a road service licence in respect of his bus TBJ362, for the routes of "Peristeronopighi-Famagusta" and "Peristeronopighi-Lefkoniko", under the provisions of the Motor Transport (Regulation) Law, 1964 (Law 16/1964).

A. *Triantafyllides*, for the Applicant.

M. *Spanos*, Counsel of the Republic, for the Respondents.

Cur. adv. vult.

The following Judgment was delivered by :

TRIANTAFYLLIDES, J.: By this recourse the Applicant company, which is a transport concern, challenges the validity of the decision of Respondent/2, the Licensing Authority (described in the recourse as the Permits Authority), to grant to one Andreas Theodossiou of Peristeronopighi, the Interested Party, a road service licence, in respect of his bus TBJ362, for the routes of "Peristeronopighi-Famagusta" and "Peristeronopighi-Lefkoniko", under the provisions of the Motor Transport (Regulation) Law, 1964 (Law 16/1964).

Such licence was granted to the Interested Party on the 7th January, 1966, and this fact was officially communicated to the Applicant—in answer to a request for information in the matter by advocates acting for the Applicant—by a letter of the Authority dated the 20th January, 1966 (see *exhibit 3*).

The Interested Party having been duly notified appeared in these proceedings separately, through counsel of his own; at the last, however, day of hearing of this Case no appearance was entered on behalf of the Interested Party, his counsel having previously notified the Court, in writing, that he had no instructions to appear and that he was withdrawing from the Case.

The salient events in this Case are as follows:

The Applicant is the owner of nine buses, but it has been licensed in respect of five buses only for the routes in question: it has been alleged by the Applicant that there was not sufficient business along such routes for all its nine buses.

On the 26th October, 1965, the Applicant addressed a letter to the Licensing Authority objecting to the grant of a road service licence to one Panayis Kombos from Peristeronopighi (see *exhibit 8*); it was stressed in such letter that some of the buses of the Applicant were being kept out of use due to lack of business and that, therefore, there was no reason to grant a licence to the said Kombos. It appears that eventually no such licence was granted.

On the 23rd November, 1965, the Interested Party applied himself for a road service licence in respect of his thirty-two seater bus TBJ362 (see *exhibit 5*). According to counsel for Respondents the Licensing Authority consulted in the matter the Famagusta Police, and, on the basis of a police report, the application was turned down; the Interested Party was informed accordingly by letter dated the 14th December, 1965 (see *exhibit 6*) in which it was stated that the transport requirements of the village were being fully served by the already existing buses.

On the 20th December, 1965, the Interested Party addressed an application to the Licensing Authority for a reconsideration of his case (see *exhibit 7*) stating that the existing buses did not serve sufficiently the needs of the village because, for example, thirty or forty male pupils had to go to Lefkoniko on foot or on bicycles, as the only bus serving the relevant route, to Lefkoniko, was taking only the female pupils, who were about fifty. This application of the Interested Party was supported by two hundred signatures of co-villagers of his.

The views of the Famagusta Police were sought once again and this time—according to para. 2 of the Opposition—the said Police reported that, after careful examination, it had been ascertained that the Applicant did not serve sufficiently the public, who were suffering hardship in view of the existing monopoly. It was added that the matters raised by the application which was supported by two hundred inhabitants of the village were well-founded and it was recommended to grant a road service licence to the Interested Party. Upon that a road service licence was granted, as aforesaid, on the 7th January, 1966, to the Interested Party and this recourse was filed on the 22nd January, 1966.

A preliminary issue that has arisen during the hearing of this Case was whether a legitimate interest of the Applicant

has been affected, in the sense of Article 146.2 of the Constitution, so as to entitle it to make this recourse. I have no difficulty in holding that this is so, in view of the fact that by the *sub judice* decision a competitor was allowed to provide transport facilities along a route, where, at the time, Applicant was providing such facilities itself.

Coming next to the merits of this recourse it is to be noted, first, that, to begin with, the Applicant had contended that the second report of the Famagusta Police was drafted contrary to the views of the local Police at Lefkoniko and that, therefore, the consequent decision of the Licensing Authority was based on a misconception of fact. This contention was, however, abandoned by counsel for the Applicant in the course of the proceedings and it is, therefore, no longer necessary to deal with it.

Thus, the only matter of substance which remains to be dealt with is the submission of counsel for the Applicant to the effect that if the routes concerned were not properly served, then, before granting a road service licence to the Interested Party, the Licensing Authority ought to have asked the Applicant whether it could provide more facilities itself, and that, in any case, in this connection *exhibit 7*, i.e. the last application of the Interested Party, as a result of which the decision complained of was taken, ought to have been brought to the notice of the Applicant for its views.

As stated in para. 3 of the Opposition, the Licensing Authority, in deciding on the matter of the grant of a road service licence to the Interested Party, took into account, on the 7th January, 1966, the letter of the Applicant dated 26th October, 1965 (*exhibit 8*); that was the letter by which complaint was being made against the possibility of a road service licence being granted to one Kombos; so it appears that no other representations of the Applicant, and in particular in relation to the application of the Interested Party, were before the Licensing Authority at the material time; and as a matter of fact it has not been suggested by counsel for Respondents that the Applicant was ever notified of the application of the Interested Party for a road service licence, so as to have an opportunity to make appropriate representations to the Licensing Authority.

It is correct that on the 12th January, 1966, the Applicant wrote to the Authority objecting to the grant of a road service licence to the Interested Party (see *exhibit 4*) but this was after

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the Licensing Authority had already decided on the 7th January, 1966 to grant such a licence to the Interested Party; and it is clear from its letter, *exhibit* 4, that the Applicant got to know of the Interested Party's involvement in the matter after the event.

It is provided under section 8(2) of Law 16/64 that the Licensing Authority, in exercising its discretion regarding the granting of road service licences, "shall take into consideration any representations which may be made by persons who on the date of the coming into operation of the relevant provisions were already providing in good faith and for a reasonably long time transport facilities along or near to the routes in question or any part thereof".

The Applicant company was formed on the 16th August, 1965; so it was not in existence as such, when the relevant provisions came into operation in November, 1964 (see the Notice given under section 18 of Law 16/64 on the 12th November, 1964—Not. 483. Supplement No. 3 to the Gazette of the 12th November, 1964).

It is not in dispute, however, that the shareholders of the Applicant company are persons who as individuals were providing transport facilities in the past, in the sense of the above-quoted provision in section 8(2) of Law 16/64; so, though in law a company is a different person from its shareholders, I do think that for the purposes of the proper application of section 8(2) of Law 16/64 the Applicant ought to have been treated as a group of persons whose representations ought to have been taken into consideration; and once it was known to the Licensing Authority that it was objecting to the grant of other road service licenses along the routes concerned (see *exhibit* 8) then Applicant ought to have been informed of the application of the Interested Party—especially the one which was granted, *exhibit* 7—so that it could put forward any representations it might wish to make.

Irrespective, however, of the above view, there remains always the fact that the Licensing Authority reconsidered its refusal to grant a road service licence to the Interested Party on the ground of an allegation that the Applicant was not serving sufficiently the routes concerned and was exploiting a monopoly enjoyed by it. I am of the opinion that it was necessary, as a matter of proper administration and for the purpose of conducting a proper enquiry and ascertaining correctly all material

facts, to bring the said allegation to the notice of the Applicant, and have its explanations thereon, before deciding finally the matter see *HjiLouca* and *The Republic* (1966) 3 C.L.R. 854): this was not done and so the discretion of the Licensing Authority was exercised in a defective manner, contrary to the relevant principles of administrative law and in excess and abuse of powers.

For the above reasons I have decided to declare null and void and of no effect whatsoever the *sub judice* decision and to let the matter be reconsidered properly by the Licensing Authority.

There shall be no order as to costs in this recourse in favour of the Applicant, because to a certain extent costs have been increased by Applicant's conduct of the proceedings: but on the other hand, once an order for costs to the successful Applicant has been refused as above, it is only proper to cancel the order for costs made, for the same reason, against the Applicant on the 28th December, 1966, and it is hereby ordered accordingly.

*Sub judice decision annulled.
Order for costs as aforesaid.*

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